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The

Transfer Tax Law

of the State of New York

Guaranty Trust Company
of New York
1915

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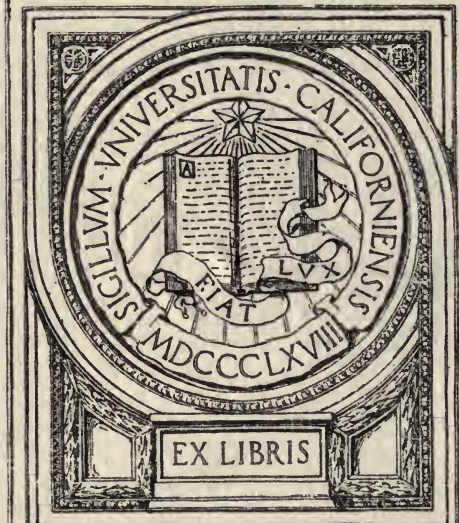

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The
Transfer Tax Law

New York (State) Laws, Statutes, etc.

THE

TRANSFER TAX LAW

OF THE STATE OF NEW YORK

COMPLETE

Including the Amendments
of 1915
being the Article entitled

"TAXABLE TRANSFERS"

constituting

Article 10, Chapter 62, of the Laws of 1909

as amended by

Laws of 1910, Chapter 706
Laws of 1911, Chapter 732
Laws of 1913, Chapter 639
Laws of 1915, Chapter 664

IN EFFECT MAY 20, 1915

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GUARANTY TRUST COMPANY *of* NEW YORK

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Fifth Ave. and 43rd St.

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FOREWORD

There is here presented the text of the INHERITANCE TAX LAW of the State of New York, including the amendments passed at the legislative session of 1915.

By the recent amendments the transfer of certain intangible property of non-residents, whether by will or intestate law, or made "*inter vivos*" in contemplation of death, is now made taxable.

An interest in any partnership business conducted wholly or partly within the State of New York, is made taxable in such proportion as the value of the entire property of such partnership located in the State of New York bears to the value of the entire partnership.

Intangible property, consisting of shares of stock, bonds, notes or other evidence of interest in any corporation, joint stock company or association, where the property represented by such shares of stock, bonds, notes or other evidence of interest consists of real property located wholly or partly within the State of New York, is made taxable in such proportion as the value of the real property of such corporation, joint stock company or association, located in the State of New York, bears to the value of the entire

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property of such corporation, joint stock company or association, the securities of the following corporations being exempted:

Moneyed corporations,
Railroad or transportation companies,
Public service companies,
Manufacturing corporations,

as defined and classified by the Laws of this State.

A further radical change has been made, in that intangible property held by residents of the State of New York as joint tenants is made taxable to the survivor as if the whole thereof had been bequeathed to the survivor by the deceased joint tenant.

ARTICLE 10

Taxable Transfers

Section

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§ 220. **Taxable transfers.** A tax shall be and is hereby imposed upon the transfer of any tangible property within the state and of intangible property, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases, subject to the exemptions and limitations hereinafter prescribed:

1. When the transfer is by will or by the intestate laws of this state of any intangible property, or of tangible property within the state, from any person dying seized or possessed thereof while a resident of the state.

2. When the transfer is by will or intestate law, of tangible property within the state *or of any intangible property, if evidenced by or consisting of shares of stock, bonds, notes or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized, except a corporation, foreign or domestic, or joint stock company or association constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation, or a public service or manufacturing corporation as defined and classified by the laws of this state, and the property represented by such shares of stock, bonds, notes or other evidences of interest consists of real property which is located, wholly or partly, within the state of New York, or of an interest in any partnership business conducted, wholly or partly, within the state of New York, in such proportion as the value of the real property of such corporation, joint*

stock company or association, or as the value of the entire property of such partnership located in the state of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership, and the decedent was a nonresident of the state at the time of his death.

3. Whenever the property of a resident decedent, or the property of a nonresident decedent within this state, transferred by will is not specifically bequeathed or devised, such property shall, for the purposes of this article, be deemed to be transferred proportionately to and divided pro rata among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

4. When the transfer is of intangible property, or of tangible property within the state, made by a resident, or of tangible property within the state *or of any intangible property, if evidenced by or consisting of shares of stock, bonds, notes or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized, except a corporation, foreign or domestic, or joint stock company or association constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation, or a public service or manufacturing corporation as defined and classified by the laws of this state, and the property represented by such shares of stock, bonds, notes or other evidences of interest consists of real property which is located, wholly or partly, within the state of New York, or of*

an interest in any partnership business conducted, wholly or partly, within the state of New York, in such proportion as the value of the real property of such corporation, joint stock company or association, or as the value of the entire property of such partnership located in the state of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership made by a nonresident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death.

5. When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer whether made before or after the passage of this chapter.

6. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.

7. *Whenever intangible property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to*

either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor by will.

8. The tax imposed hereby shall be upon the clear market value of such property, at the rates hereinafter prescribed.

§ 221. Exceptions and limitations. Any property devised or bequeathed for religious ceremonies, observances or commemorative services of or for the deceased donor, or to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent, hospital or infirmary corporation, wherever incorporated, including corporations organized exclusively for bible or tract purposes and corporations organized for the enforcement of laws relating to children or animals, shall be exempted from and not subject to the provisions of this article. There shall also be exempted from and not subject to the provisions of this article personal property other than money or securi-

ties bequeathed to a corporation or association wherever incorporated or located, organized exclusively for the moral or mental improvement of men or women or for scientific, literary, library, patriotic, cemetery or historical purposes or for two or more of such purposes and used exclusively for carrying out one or more of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes.

§ 221-a. Rates of tax. 1. Upon all transfers taxable under this article of property or any beneficial interest therein, of an amount in excess of the value of five thousand dollars to any father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor, or vendor, or to any child to

whom any such decedent, grantor, donor, or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or to any lineal descendant of such decedent, grantor, donor, or vendor born in lawful wedlock, the tax on such transfer shall be at the rate of

One per centum on any amount in excess of five thousand dollars up to the sum of fifty thousand dollars.

Two per centum on any amount in excess of fifty thousand dollars up to the sum of two hundred and fifty thousand dollars.

Three per centum on any amount in excess of two hundred and fifty thousand dollars up to the sum of one million dollars.

Four per centum on any amount in excess of one million dollars.[1]

2. Upon a transfer taxable under this article of property or any beneficial interest therein of an amount in excess of the value of one thousand dollars to any person or

[1]ILLUSTRATION.—The tax rates, as applied to direct heirs, operate as follows, using $2,000,000 as the total amount of bequest to one person:

	Amount	*Rate*	*Tax*
	$ 5,000	Exempt	$ 000
The next....	50,000	1%	500
The next....	250,000	2%	5,000
The next....	1,000,000	3%	30,000
The next....	695,000	4%	27,800
	$2,000,000		$63,300

corporation other than those enumerated in paragraph one of this section, the tax shall be at the rate of

Five per centum on any amount in excess of one thousand dollars up to the sum of fifty thousand dollars.

Six per centum on any amount in excess of fifty thousand dollars up to the sum of two hundred and fifty thousand dollars.

Seven per centum on any amount in excess of two hundred and fifty thousand dollars up to the sum of one million dollars.

Eight per centum on any amount in excess of one million dollars.[2]

§ 221-b. Exemption of certain personal property. A transfer of pictures, statuary, works of art, antiques, books, manuscripts or other similar personal property shall be exempted from and not subject to the provisions of this article, if within two years after such transfer the person to whom such transfer is made shall present the same to the state, or to a municipal corporation of the state for educational, scientific, literary, library, or historical purposes; and if the

[2]ILLUSTRATION.—The method of computing the tax under the new law is illustrated in the following table calculated up to a $2,000,000 bequest to one person:

	Amount	*Rate*	*Tax*
	$ 1,000	Exempt	$ 000
The next....	50,000	5%	2,500
The next....	250,000	6%	15,000
The next....	1,000,000	7%	70,000
The next....	699,000	8%	55,920
	$2,000,000		$143,420

tax thereon shall have been theretofore paid the amount thereof shall be refunded in accordance with the provisions of this article.

§ 222. **Accrual and payment of tax.** All taxes imposed by this article shall be due and payable at the time of the transfer, except as herein otherwise provided. Taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof can not be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof. Such tax shall be paid to the state comptroller in a county in which the office of appraiser is salaried, and in other counties, to the county treasurer, and said state comptroller or county treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment as provided in section two hundred and thirty-six.

§ 223. **Discount and interest.** If such tax is paid within six months from the accrual thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accrual thereof, interest shall be charged and collected thereon at the rate of

ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax can not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged.

§ 224. **Lien of tax and collection by executors, administrators and trustees.** Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the executors, administrators and trustees of every estate so transferred shall be personally liable for such tax until its payment. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such executor, administrator or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom and shall pay over the same to the state comptroller or county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver

or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien or charge on such real property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five of this chapter. If any such legacy shall be given in money to any such person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

§ 225. Refund of tax erroneously paid. If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the

surrogate having jurisdiction, on notice to the state comptroller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the state comptroller or county treasurer; or if such tax has been paid to such state comptroller or county treasurer, such officer shall refund out of the funds in his hands or custody to the credit of such taxes such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this article. If after the payment of any tax in pursuance of an order fixing such tax, made by the surrogate having jurisdiction, such order be modified or reversed by the surrogate having jurisdiction within two years from and after the date of entry of the order fixing the tax, or be modified or reversed at any time on an appeal taken therefrom within the time allowed by law on due notice to the state comptroller, the state comptroller shall, if such tax was paid in a county in which the office of appraiser is salaried, refund to the executor, administrator, trustee, person or persons by whom such tax was paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of the tax fixed by the order modified or reversed, out of the funds in his hands or custody to the credit of such taxes, and to credit himself with the same in the account required to be rendered by

him under this article, or if paid in a county in which the office of appraiser is not salaried, he shall by warrant direct and allow the county treasurer of the county to refund such amount in the same manner; but no application for such refund shall be made after one year from such reversal or modification, unless an appeal shall be taken therefrom, in which case no such application shall be made after one year from the final determination on such appeal or of an appeal taken therefrom, and the representatives of the estate, legatees, devisees or distributees entitled to any refund under this section shall not be entitled to any interest upon such refund, and the state comptroller shall deduct from the fees allowed by this article to the county treasurer the amount theretofore allowed him upon such overpayment. Where it shall be proved to the satisfaction of the surrogate that deductions for debts were allowed upon the appraisal, since proved to have been erroneously allowed, it shall be lawful for such surrogate to enter an order assessing the tax upon the amount wrongfully or erroneously deducted. This section, as amended, shall apply to appeals and proceedings now pending and taxes heretofore paid in relation to which the period of one year from such reversal or modification has not expired when this section, as amended, takes effect.

§ 226. Taxes upon devises and bequests in lieu of commissions. If a testator be-

queaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article.

§ 227. **Liability of certain corporations to tax.** If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state comptroller or the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or nonresident, or belonging to, or standing in the joint names of such decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or

survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state comptroller at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the state comptroller consents thereto in writing. And it shall be lawful for the said state comptroller, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to

pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of not less than five or more than twenty-five thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state comptroller in any court of competent jurisdiction.

§ 228. Jurisdiction of the surrogate. The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such jurisdiction, the surro-

gate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the code of civil procedure shall set forth the name of the state comptroller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to the state comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the state comptroller were a creditor of the decedent.

§ 229. **Appointment of appraisers, stenographers and clerks.** The state comptroller shall appoint and may at pleasure remove not to exceed six persons in the county of New York, four persons in the counties of Kings, and Bronx, and one person in the counties of Albany, Dutchess, Erie, Monroe, Nassau, Niagara, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Suffolk and Westchester, to act as appraisers therein. The state comptroller, from time to time and

whenever in his opinion it is necessary, may also appoint and at pleasure remove not to exceed two additional persons to act as transfer tax appraisers in the county of New York, to whom shall be referred the appraisal of delinquent estates pending before the transfer tax appraisers in New York county, where more than eighteen months have elapsed since the death of such decedents, respectively, and also to act as appraiser of other estates whenever it shall appear to the comptroller that the services of such additional appraiser is necessary. The appraiser so appointed shall receive an annual salary to be fixed by the state comptroller, together with their actual and necessary traveling expenses and witness fees, as hereinafter provided, payable monthly by the state comptroller out of any funds in his hands or custody on account of transfer tax. The salaries of each of the appraisers so appointed shall not exceed the following amounts: In New York county, four thousand dollars; in Kings and Bronx counties, four thousand dollars; in Albany, Erie, Queens and Westchester counties, three thousand dollars; in Nassau, Orange and Rensselaer counties, two thousand dollars; in Monroe, Oneida and Onondaga counties, one thousand five hundred dollars; in Dutchess, Niagara, Richmond, and Suffolk counties, one thousand dollars. Each of the said appraisers shall file with the state comptroller his oath of office and his official bond in the penal sum of not less than one thousand dollars, in the discretion

of the state comptroller, conditioned for the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney-general and the state comptroller. The state comptroller shall retain out of any funds in his hands on account of said tax the following amounts: First, a sum sufficient to provide the appraisers of New York county with one managing clerk, at a salary not to exceed four thousand dollars a year, whose duties shall be prescribed by the state comptroller, nine stenographers, three clerks, one examiner of values, and one assistant examiner of values, whose salaries shall not exceed two thousand dollars a year each, and one junior clerk, whose salary shall not exceed six hundred dollars a year; the appraisers of Kings and Bronx counties, with four stenographers, whose salaries shall not exceed two thousand dollars a year each, one clerk, whose salary shall not exceed seven hundred and twenty dollars a year; one page, whose salary shall not exceed four hundred and eighty dollars a year, and the appraiser of Erie county with one clerk, whose salary shall not exceed fifteen hundred dollars a year, and the appraiser of Westchester county with one clerk, whose salary shall not exceed the sum of twelve hundred dollars a year, and the appraiser of Queens county with one clerk, whose salary shall not exceed the sum of twelve hundred dollars a year, and the appraiser of Oneida county with one stenographer, whose salary shall not exceed the sum of nine hun-

dred dollars a year, such employees to be appointed by the state comptroller. The state comptroller shall also retain out of any funds in his hands on account of said tax a sum sufficient to provide each of the additional transfer tax appraisers in New York county, whenever appointed as hereinbefore provided, with a stenographer, whose salary shall not exceed the rate of two thousand dollars a year each, such employees to be appointed by the state comptroller. Second, a sum to be used in defraying the expenses for office rent, stationery, postage, process serving and other similar expenses necessarily incurred in the appraisal of estates, not exceeding fifteen thousand dollars a year in New York county and five thousand dollars a year in Kings, and Bronx counties.

§ 230. Proceeding by appraiser. In each county in which the office of appraiser is not salaried the county treasurer shall act as appraiser. The surrogate, either upon his own motion, or upon the application of any interested person, including the state comptroller, shall by order direct the person or one of the persons appointed pursuant to section two hundred and twenty-nine of this article in counties in which the office of appraiser is salaried, and in other counties, the county treasurer, to fix the fair market value of property of persons whose estates shall be subject to the payment of any tax imposed by this article.

Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state comptroller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall at such time and place appraise the same at its fair market value as herein prescribed; and for that purpose the said appraiser is authorized to issue subpœnas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to said matter as the surrogate may order or require. Every appraiser, except in the counties in which the office of appraiser is salaried, for which provision is hereinbefore made, shall be paid by the state comptroller and after the audit of said state comptroller, his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpœnaed to attend in courts of record, payment to be made out of funds in the hands of the county treasurer of the proper county on account of the tax imposed under the provisions of this article.

The value of every future or limited estate, income, interest or annuity dependent upon

any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section two hundred and twenty-five of this article.

Where any property shall, after the pas-

sage of this chapter, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this article in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred, and the surrogate shall enter a temporary order determining the amount of said tax in accordance with this provision; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate

less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article; and the executor or trustee of each estate, or the legal representative having charge of the trust fund, shall immediately upon the happening of said contingencies or conditions apply to the surrogate of the proper county, upon a verified petition setting forth all the facts, and giving at least ten days' notice by mail to all interested persons or corporations, for an order modifying the temporary taxing order of said surrogate so as to provide for the final assessment and determination of the tax in accordance with the ultimate transfer or devolution of said property. Such return of overpayment shall be made in the manner provided by section two hundred and twenty-five of this article.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the state comptroller.

§ 231. **Determination of surrogate.** From such report of appraisal and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course, determine the cash value of all estates and the amount of tax to which the same are liable; or the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable, without appointing an appraiser.

The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all persons known to be in-

terested therein, and shall immediately forward a copy of such taxing order to the state comptroller. The surrogate shall also forward to the state comptroller copies of all orders entered by him in relation to or affecting in any way the transfer tax on any estate, including orders of exemption.

If, however, it appear at any stage of the proceedings that any of such persons known to be interested in the estate is an infant or an incompetent, the surrogate may, if the interest of such infant or incompetent is presently involved and is adverse to that of any of the other persons interested therein, appoint a special guardian of such infant; but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a special guardian for such infant at any stage of the proceedings.

§ 232. **Appeal and other proceedings.** The state comptroller or any person dissatisfied with the appraisement or assessment and determination of tax may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken; but no costs shall be allowed by the surrogate on such appeal.

Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the state comptroller may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to a justice of the supreme court of the judicial district embracing the surrogate's court in which the order or decree has been filed, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers and be subject to the duties of an appraiser under section two hundred and thirty and shall receive compensation at the rate of five dollars per day for every day actually and necessarily employed in such appraisal. Such compensation shall be payable by the state comptroller or county treasurer out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in

the office of the state comptroller, and a certified copy thereof transmitted to the surrogate's court of the proper county.

§ 233. **Composition of transfer tax upon certain estates.** The state comptroller, by and with the consent of the attorney-general expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced, that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under the provisions of chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five; chapter three hundred and ninety-nine of the laws of eighteen hundred and ninety-two, or chapter nine hundred and eight of the laws of eighteen hundred and ninety-six, and the several acts amendatory thereof and supplemental thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said trustees as against the interest of such cestuis que trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the

event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the state comptroller, one copy in the office of the surrogate of the county in which the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto.

§ 234. Surrogate's assistants in New York, Kings and other counties. The state comptroller may, upon the recommendation of the surrogate, appoint, and may at pleasure remove, assistants and clerks in the surrogate's offices of the following counties, at annual salaries to be fixed by him not to exceed the amounts hereinafter specified:

1. In New York county, a transfer tax assistant, five thousand dollars; a transfer tax clerk, two thousand four hundred dollars; an assistant clerk, eighteen hundred dollars; a recording clerk, thirteen hundred dollars; a stenographer, twelve hundred dollars; and shall be entitled to expend not more than seven hundred and fifty dollars a year in such office for expenses necessarily incurred in the assessment and collection of taxes under this article.

2. In Kings county, a transfer tax assistant, four thousand dollars; a transfer tax clerk, two thousand dollars; an assistant

clerk, fifteen hundred dollars; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

3. In Erie county, a transfer tax clerk, eighteen hundred dollars.

4. In Westchester county, a transfer tax assistant, two thousand five hundred dollars.

5. In Albany county, a transfer tax clerk, fifteen hundred dollars.

6. In Queens county, a transfer tax clerk, fifteen hundred dollars.

7. In Onondaga county, a transfer tax clerk, twelve hundred dollars.

8. In Monroe county, two transfer tax clerks, one thousand dollars each; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

9. In Dutchess county, a transfer tax clerk, nine hundred dollars.

10. In Oneida county, not more than two transfer tax clerks, twelve hundred dollars in the aggregate.

11. In Suffolk county, a transfer tax clerk, one thousand dollars.

12. In Ulster county, a transfer tax clerk, seven hundred and twenty dollars.

13. In Richmond county, a transfer tax clerk, one thousand dollars.

14. In Nassau county, a transfer tax clerk, twelve hundred dollars.

Such salaries and expenses shall be paid

monthly by the state comptroller, upon proper vouchers, out of any funds in his hands on account of taxes collected under this article.

§ 235. **Proceedings by district attorneys.** If, after the expiration of eighteen months from the accrual of any tax under this article, such tax shall remain due and unpaid, after the refusal or neglect of the persons liable therefor to pay the same, the state comptroller shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citations out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney or the state comp-

troller, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the state comptroller or county treasurer may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest, the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state comptroller, after the same shall have been audited by him, shall pay all expenses incurred for the service of citations and other lawful disbursements not otherwise paid, from funds in his hands on account of such tax, or in a county in which the office of appraiser is not salaried, by a warrant upon the county treasurer of such county for the payment by him of the same from funds in his hands on account of such tax. In proceedings to which the state comptroller is cited as a party under sections two hundred and twenty-eight and two hundred and thirty of this article, he is authorized to designate and retain counsel

to represent him and to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax in any case in a county where the office of appraiser is salaried, and in any other county the state comptroller shall by warrant direct the county treasurer to pay such expenses out of any funds which may be in his hands on account of this tax; provided, however, that in the collection of taxes upon estates of nonresident decedents the state comptroller shall not allow for legal services up to and including the entry of the order of the surrogate fixing the tax a sum exceeding ten per centum of the taxes and penalties collected.

§ 236. **Receipts from county treasurer or comptroller.** One of the duplicate receipts issued for the payment of any tax under this article, as provided by section two hundred and twenty-two, shall be countersigned by the state treasurer if the same was issued by the state comptroller, and by the state comptroller if issued by any county treasurer. The officer so countersigning the same shall charge the officer receiving the tax with the amount thereof and affix the seal of his office to the same and return to the proper person; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this article unless he shall produce a receipt so sealed and countersigned, or a certified copy thereof.

Any person shall, upon the payment of fifty cents to the officer issuing such receipt, be entitled to a duplicate thereof, to be signed, sealed and countersigned in the same manner as the original.

Any person shall, upon the payment of fifty cents, be entitled to a certificate of the state comptroller that the tax upon the transfer of any real estate of which any decedent died seized has been paid, such certificate to designate the real property upon which such tax is paid, the name of the person so paying the same, and whether in full of such tax. Such certificate may be recorded in the office of the county clerk or register of the county where such real property is situate, in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

§ 237. Fees of county treasurer. The treasurer of each county in which the office of appraiser is not salaried shall be allowed to retain, on all taxes paid and accounted for by him each fiscal year under this article, five per centum on the first fifty thousand dollars, two and one-half per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers.

§ 238. Book and forms to be furnished by the state comptroller. The state comptroller shall furnish to each surrogate a book,

which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of annuities, life estates, terms of years, and other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The state comptroller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book.

§ 239. **Reports of surrogate and county clerk.** Each surrogate shall, on January, April, July and October first of each year, make a report, upon the forms furnished by the comptroller containing all the data and matters required to be entered in such book, which shall be immediately forwarded to the state comptroller. The county clerk of each county, except in the counties where the registers perform the duties of the county clerk with respect to the recording of deeds, and when in such counties the registers, shall, at the same times, make reports containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, which shall be immediately forwarded to the state comptroller.

§ 240. **Reports of county treasurer.** Each county treasurer in a county in which the office of appraiser is not salaried shall make a report, under oath, to the state comptroller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state comptroller. He shall, at the same time, pay the

state treasurer all taxes received by him under this article and not previously paid into the state treasury, except as provided in the next section, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum.

§ 241. Report of state comptroller; payment of taxes; refunds in certain cases. The state comptroller shall deposit all taxes collected by him under this article, except as hereinafter otherwise provided, in a responsible bank, banking house or trust company in the city of Albany, which shall pay the highest rate of interest to the state for such deposit, to the credit of the state comptroller on account of the transfer tax. And every such bank, banking house or trust company shall execute and file in his office an undertaking to the state, in the sum, and with such sureties, as are required and approved by the comptroller, for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking house or trust company, with interest thereon on daily balances at such rate as the comptroller may fix. Every such undertaking shall have indorsed thereon, or annexed thereto, the approval of the attorney-general as to its form. The state comptroller shall on the first day of each month make a verified return to the state treasurer of all taxes received by him under

this article, stating for what estate, and by whom and when paid; and shall credit himself with all expenditures made since his last previous return on account of such taxes, for salary, refunds or other purposes lawfully chargeable thereto. He shall on or before the tenth day of each month pay to the state treasurer the balance of such taxes remaining in his hands at the close of business on the last day of the previous month, as appears from such returns. Whenever the tax on a contingent remainder has been determined at the highest rate which on the happening of any of said contingencies or conditions would be possible under the provisions of this article, the state comptroller, in the counties wherein this tax is payable direct to him, and in all other counties the treasurer of said counties, respectively, when such tax is paid shall retain and hold to the credit of said estate so much of the tax assessed upon such contingent remainders as represents the difference between the tax at the highest rate and the tax upon such remainders which would be due if the contingencies or conditions had happened at the date of the appraisal of said estate, and the state comptroller or the county treasurer shall deposit the amount of tax so retained in some solvent trust company or trust companies or savings banks in this state, to the credit of such estate, paying the interest thereon when collected by him to the executor or trustee of said estate, to be applied by said executor or trustee as provided by

the decedent's will. Upon the happening of the contingencies or conditions whereby the remainder ultimately vests in possession, if the remainder then passes to persons taxable at the highest rate, the state comptroller or the county treasurer shall turn over the amount so retained by him to the state treasurer as provided herein and by section two hundred and forty of this article, or if the remainder ultimately vests in persons taxable at a lower rate or a person or corporation exempt from taxation by the provisions of this article, the state comptroller or the county treasurer shall refund any excess of tax so held by him to the executor or trustee of the estate, to be disposed of by said executor or trustee as provided by the decedent's will. Executors or trustees of any estate may elect to assign to and deposit with the state comptroller or the county treasurer, bonds or other securities of the estate approved by the state comptroller, or the county treasurer, both as to the form of the collateral and the amount thereof, for the purpose of securing the payment of the difference between the tax on said remainder at the highest rate and the tax upon said remainder which would be due if the contingencies or conditions had happened at the date of the appraisal of said estate, and cash for the balance of said tax as assessed, which said bonds or other securities shall be held by the state comptroller, or the county treasurer, to the credit of said estate until the actual vesting of said remainders, the income

therefrom when received by the state comptroller or the county treasurer to be paid over to the executor or trustee during the continuance of the trust estates and then to be finally disposed of in accordance with the ultimate transfer or devolution of said remainders as hereinbefore provided; and it shall be the duty of the executors or trustees of such estates to forthwith notify the state comptroller of the actual vesting of all such contingent remainders.

If any executor or trustee shall have deposited with the state comptroller, or the county treasurer, cash or securities, or both cash and securities, to an amount in excess of the sum necessary to pay the transfer tax upon such contingent remainders at the highest rate as aforesaid, the excess of tax so deposited shall be returned to the executor or trustee, or if any executor or trustee shall have deposited with the state comptroller, or the county treasurer, cash or securities, or both cash and securities, to an amount less than is sufficient to pay the tax upon such contingent remainders as finally assessed and determined, the executor or trustee of said estate shall forthwith, upon the entry of the order determining the correct amount of tax due, pay to the state comptroller, or the county treasurer, whichever is entitled under the provisions of this article to receive the tax, the balance due on account of said tax.

§ 242. **Application of taxes.** All taxes levied and collected under this article when

paid into the treasury of the state shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct.

§ 243. Definitions. The words "estate" and "property," as used in this article, shall be taken to mean the property or interest therein passing or transferred to individual or corporate legatees, devisees, heirs, next of kin, grantees, donees or vendees, and not as the property or interest therein of the decedent, grantor, donor or vendor and shall include all property or interest therein, whether situated within or without this state. The words "tangible property" as used in this article shall be taken to mean corporeal property such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in bank, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt. The words "intangible property" as used in this article shall be taken to mean incorporeal property, including money, deposits in bank, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt. The word "transfer," as used in this article, shall be taken to include the passing of property or any interest therein in the possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer" and "district attorney,"

as used in this article, shall be taken to mean the treasurer or the district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-eight of this article. The words "the intestate laws of this state," as used in this article, shall be taken to refer to all transfers of property, or any beneficial interest therein, effected by the statute of descent and distribution and the transfer of any property, or any beneficial interest therein, effected by operation of law upon the death of a person omitting to make a valid disposition thereof, including a husband's right as tenant by the curtesy or the right of a husband to succeed to the personal property of his wife who dies intestate leaving no descendants her surviving.

§ 244. Exemptions in article one not applicable. The exemptions enumerated in section four of this chapter shall not be construed as being applicable in any manner to the provisions of this article.

§ 245. Limitation of time. The provisions of the code of civil procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law, provided, however,

that as to real estate in the hands of bona fide purchasers, the transfer tax shall be presumed to be paid and cease to be a lien as against such purchasers after the expiration of six years from the date of accrual.

APPENDIX

A situation requiring serious attention has been created by the amendments of 1915, which provide that intangible property held in joint tenancy shall now be taxable to the survivor as if the whole thereof had been bequeathed to the survivor by the deceased joint tenant.

Hitherto, if a bona fide joint account has been established to the satisfaction of the authorities of this State, they have endeavored to ascertain the contribution made by both parties to the joint account and to fix a tax upon the portion received by the survivor which he had not contributed. In this they are apparently sustained by Surrogate Fowler in the Matter of Heiser, 85 Misc., 271, in which he states:

> "Joint ownership of personal property is recognized by the laws of this State. * * * The right of the survivor to the entire property held by them as joint tenants is the distinguishing characteristic of this species of ownership, and if all the property held jointly belonged originally to one of the parties and the rights of a joint owner were conferred by the original owner upon his joint tenant as a gift intended to take effect at or after

death, the value of the interest passing to the survivor would be subject to the provisions of the Transfer Tax Law. But if the joint tenants have contributed out of their individual funds to the purchase of the property held by them as joint tenants, the right of the survivor to take the entire property is not a gift from the other joint tenant, but a right derived from the contract entered into between them at the time the instrument creating the joint tenance was executed."

This statement was quoted with approval by the Appellate Division, Second Department, in Matter of Dana Co., 164 App. Div., 45; affirmed in 214 N. Y. Mem. 106.

Again, in re Dalsimer's Estate, 148 N. Y. Supp. 914, the surrogate held that although the money standing to the credit of a joint bank account of decedent and his wife was not taxable, a joint deposit with the bank of stocks and bonds not kept in a safe deposit box rented by decedent, but in the custody and control of the bank was taxable on the death of the husband because it did not appear that any of the stocks and bonds in question were purchased with money belonging to the decedent's wife and therefore the right of survivorship conferred upon her by the creation of the joint deposit was a gift by the decedent, intended to take effect in possession and enjoyment after his death, within the meaning of subdivision 4, section

220 of the Tax Law. So much of this decision as imposed a transfer tax on the joint deposit of stocks and bonds was reversed by the Appellate Division, First Department (in the Matter of Estate of Samuel Dalsimer, deceased), 153 N. Y. Supp. 58, the court, by McLaughlin, J., saying:

> "It seems to me to be unnecessary to consider to what extent, if any, the decedent's wife contributed to this joint account, either in money or securities, since they could create a joint ownership therein, irrespective of what each contributed with the right of survivorship. (Kelly v. Beers, 194 N. Y. 49; West v. McCullough, 123 App. Div. 846; affirmed 194 N. Y. 518.)
>
> "That the securities in question were held in a joint account and were intended to be so held, was conclusively established by the communication of July 18, 1912, signed by the decedent and his wife, to which reference has already been made. The title to such securities was in them as joint tenants and from that time until the decedent's death neither he nor his wife had the exclusive title; on the contrary each had 'a unity of interest; unity of title; unity of time and unity of possession' (17 Am. & Eng. Enc. of Law, Second Edition, 649),—all the essentials necessary to create a joint tenancy; and, which, once created, carried with it the right of survivorship. It is

by reason of this right that it has been held that the interest of a joint tenant is not descendable and cannot be devised by will. No right passes by the death of one of the joint tenants and its only effect is to vest the entire title in the survivor; (Farrelly v. Emigrant Industrial Savings Bank, 92 App. Div. 529; affd. 179 N. Y. 574); in other words, the only question determined by the death is which of the joint tenants takes the whole. If this be true, then it follows there is nothing upon which a tax can be imposed, for the transfer of the title was not made in contemplation of death. In support of this view, see Matter of Tilley (151 N. Y. Supp. 79)."

In Matter of Tilley, 166 App. Div. 240, the Appellate Division, Third Department, held:

"No right passes by the death of one of the parties, for where the deposit is in the joint names of the parties and the intent appears—as it now must under the statute—to create the joint tenancy, its effect is to vest title in the entire fund in the survivor.* * * The right of survivorship vests in the creation of the joint tenancy, and the only question determined by death is which shall take the entire estate.* * * The possession is given upon the creation of the estate; the rights are absolutely and conclusively fixed, and the only question which is contingent is which of two

or more joint tenants shall eventually own the entire estate. But each is in full possession, each has full ownership as against all the world, with the exception of the equal right of the others, and the transfer which becomes fully determined at the death of one of two joint owners relates back to the creation of the estate. It was then that the rights vested, and the death only determines which shall be the gainer by the transaction. While there might be a joint tenancy created which would be so obviously fraudulent in its inception as to take it out of the general rule, we are persuaded that where an account is created in the manner permitted by the Banking Law, with all of its incidents known and recognized in the law, it cannot be presumed that there was any other intention than that which the law ascribes to such an act, and that property thus disposed of is not 'made in contemplation of * * * death,' as that language is understood in the jurisprudence of this State, nor 'intended to take effect in possession or enjoyment at or after such death.'"

It should be remembered that the Banking Law, Sec. 198, specifically authorizes the creation of joint accounts in the following language:

"* * * When a deposit shall have been made by any person in the name

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of such depositor and another person and in form to be paid to either, or the survivor of them, such deposit thereupon and any additions thereto made, by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to either during the lifetime of both, or to the survivor after the death of one of them; and such payment and the receipt or acquittance of the one to whom such payment is made, shall be a valid and sufficient release and discharge to said company, for all payments made on account of such deposit prior to the receipt by said company of notice in writing signed by any one of such joint tenants, not to pay such deposit in accordance with the terms thereof."

It is not attempted to draw any conclusion from the matter herein presented, but to point out that by the recent amendments to the Transfer Tax Law the State is attempting to assess a tax upon property which neither passes by will nor intestate law nor "by deed, grant, bargain, sale or gift *made in contemplation of death* of the grantor, vendor or donor, or intended *to take effect in possession or enjoyment at or after such death*"; inasmuch as the courts have thus far held that when a joint account has been

properly constituted as permitted by law, property thus disposed of is not transferred in contemplation of death, nor as a gift intended to take effect in possession or enjoyment at or after such death.

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